

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

JAMES GRAY,

Petitioner,

v.

**Civil Action No. 5:22-CV-190
Crim. Action No. 5:20-CR-44-1
Judge Bailey**

USA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

The above referenced case is before this Court upon the magistrate judge's recommendation that petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody [Civ. Act. No. 5:22-CV-190, Doc. 1; Crim. Act. No. 5:20-CR-44-1, Doc. 76] be dismissed without prejudice as premature.

This Court is charged with conducting a *de novo* review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. ***Thomas v. Arn***, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. ***United***

States v. Schronce, 727 F.2d 91 (4th Cir. 1984), *cert. denied*, 467 U.S. 1208 (1984). No objections have been filed to the magistrate judge's report and recommendation.


A *de novo* review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation [**Civ. Act. No. 5:22-CV-190, Doc. 4; Crim. Act. No. 5:20-CR-44-1, Doc. 84**] is **ADOPTED**. Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody [**Civ. Act. No. 5:22-CV-190, Doc. 1; Crim. Act. No. 5:20-CR-44-1, Doc. 76**] is **DISMISSED WITHOUT PREJUDICE** as premature.

Moreover, this Court **DIRECTS** the Clerk to **STRIKE** Civil Action Number 5:22-CV-190 from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: October 12, 2022.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE